

P9600SUS2B(P260)

REMARKS

The latest Office Action issued by the Examiner purports to be responsive to Applicant's communication filed on 7 October 2004. Inasmuch as Applicants did not file any paper on 7 October 2004, but did file an Appeal Brief on 4 October 2004, Applicants assume that the Office Action is in response to the Applicant's Appeal Brief. Moreover, inasmuch as Applicants had filed a Notice of Appeal on 4 August 2004 and the complimentary Appeal Brief on 4 October 2004, Applicants likewise assume that the Examiner has withdrawn the Appeal. Although Applicants note that there is no formal notification of the same within the latest Office Action. Instead, the latest Office Action simply states that the previous arguments "have been considered but are moot in view of the new grounds of rejection."

The Examiner now attempts to reject claims 1-4, 6-7, 32 and 33 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,071,996 to Davis et al. Claims 8, 10-15, and 24 are similarly rejected. Claims 16-19 and 21-23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Davis et al (ostensibly Davis '996).

U.S. Patent No. 6,071,996 to Davis et al was filed on August 8, 1997 and issued as a patent on June 6, 2000. The subject application, however, is a divisional of U.S. Serial No. 09/039,849, which is a continuation of U.S. Serial No. 08/606,119, which was filed on February 23, 1996. Accordingly, U.S. Patent No. 6,071,996 to Davis et al is not an eligible reference under 35 U.S.C. § 102(e). Accordingly, the Examiner's rejections are improper and should be withdrawn. Moreover, a Notice of Allowance of the pending claims should be issued.

The Examiner has also rejected claims 28-31 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,563,217 to Davis et al. This is the exact issue that Applicants appealed as summarized on page 5 of Applicant's Appeal Brief filed on 4 October 2004. Applicants maintain, therefore, that this is not a new ground for rejection and is improper at this juncture. Should the Examiner choose to maintain this rejection, Applicants will reinstate the Appeal. Should the

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Examiner care to discuss any of the foregoing in greater detail, the undersigned attorney would welcome a telephone call.

Before closing, the Applicants would like to summarize the Examiner's actions over the last five years, which have precluded the Applicants from obtaining patent coverage on an invention that they believe they are entitled to. The Examiner began by rejecting the claims in view of Davis '136 in March of 2001, which was over one year from the filing of the application. Following Applicants Response in June of 2001, the Examiner withdrew the rejections in view of Davis '136, but nonetheless issued a final rejection in view of Shepard '340 in November of 2001. Applicants subsequently responded after final in January of 2002, but because the Examiner was ostensibly unpersuaded by the Response After Final, Applicants appealed and filed an Appeal Brief in July of 2002. Nearly six months after the filing of that Brief, the Examiner withdrew the Appeal, withdrew the rejections in view of Shepard '340, and issued new rejections in view of Tajima '640 in December of 2002. Applicants responded in March of 2003, and in view of that Response, the Examiner withdrew the rejections over Tajima '640 but maintained a rejection of the claims in view of 35 U.S.C. § 112. The Applicants immediately responded in August of 2003 to address the §112 issues. Nearly four months later (December 2003) the Examiner issued a rejection in view of Susinkas '471. Applicants responded to this rejection in February of 2004, but in May 2004 the Examiner issued yet another rejection in view of Davis '217 while ostensibly withdrawing the rejections in view of Susinkas '471. Applicants appealed in August of 2004 and filed an Appeal Brief in October 2004. Nearly six months after the filing of the Appeal Brief, the Examiner has now ostensibly withdrawn the rejections in view of Davis '217 in favor of a rejection based upon Davis '996, which is not even a prior art reference (which is a determination that can readily be made by a review of the face of Davis '996).

No new claims have been added and therefore no additional fees are believed due at this time. Nonetheless, in the event that a fee required for the filing

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of this document is missing or insufficient, the undersigned attorney hereby authorizes the Commissioner to charge payment of any fees associated with this communication or to credit any overpayment to Deposit Account No. 06-0925.

Respectfully submitted,



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